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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,688	12/14/2001	Robert McMillen	41575/27975	7323
29493	7590	11/25/2003		
HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			EXAMINER EDELL, JOSEPH F	
			ART UNIT 3636	PAPER NUMBER

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/020,688

Applicant(s)

MCMILLEN, ROBERT

Examiner

Joseph F Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the amended description: 27. Applicant states that proposed drawing changes were submitted in Paper No. 9, however no proposed drawings were submitted. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 8-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,106,423 to Schwarz.

Schwarz discloses an ergonomic support that includes all the limitations recited in claims 1-4 and 8-19. Schwarz shows an ergonomic support having a housing 10 (Fig. 1) with an arcuate channel 11 (Fig. 2), an extending element 21 (Fig. 1) with a convex pressure surface end and an arcuate end supported in the channel of the

housing, an actuator 16 (Fig. 1) anchored to the housing, a traction element 12 (Fig. 1) engaging the actuator and communicating with the arcuate end of the extending element, and a tapering, flexible pressure plate 31 (Fig. 4) attached to the pressure surface end of the extending element and including a horizontal medial axis. The description of the ergonomic device inherently discloses the method of distributing the pressure of a lumbar support.

4. Claims 1-4 and 8-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,465,317 to Schwarz.

Schwarz discloses an ergonomic support that includes all the limitations recited in claims 1-4 and 8-19. Schwarz shows an ergonomic support having a housing 16 (Fig. 3) with an arcuate channel (see Fig. 3), an extending element 5 (Fig. 1) with a convex pressure surface end and an arcuate end supported in the channel of the housing, an actuator 40 (Fig. 3) anchored to the housing, a traction element 14 (Fig. 3) engaging the actuator and communicating with the arcuate end of the extending element, and a tapering, flexible pressure plate 4 (Fig. 1) attached to the pressure surface end of the extending element and including a horizontal medial axis. The description of the ergonomic device inherently discloses the method of distributing the pressure of a lumbar support.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarz ('423).

Schwarz ('423) discloses an ergonomic support that is basically the same as that recited in claims 5-7 except that that plastic is not specified as the material with which elements are made, as recited in the claims. Although the material is not specified, modifying the material would have been obvious at the time of applicant's invention because the use of preferred materials is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the material since the applicant has not disclosed that having the specific material solves any stated problem or is for any particular purpose other and it appears that the ergonomic device would perform equally well with any well known material used in the chair art.

### ***Response to Arguments***

7. Applicant's arguments filed 13 June 2003 have been fully considered but they are not persuasive. With respect to the rejection of claims 1-4 and 8-19 in view of Schwarz ('423), applicant argues that Schwarz ('423) fails to teach an ergonomic support having a traction element because the element 12 (Fig. 1) of Schwarz ('423) is merely a pin. However, the amended specification defines on page 4 that "traction may also be applied by any of the following elements: a wire, a bowden cable, a hard drawn wire, a *pin*, a rod, a bracket and/or a spoke" (emphasis added). Therefore, the traction element

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12 (Fig. 1) of Schwarz ('423) does have a first end engaging the actuator 16 (Fig. 1) and a second end in tractive communication with the arcuate encapsulated end of the extending element 21 (Fig. 1). Next, applicant argues that the element 10 (Fig. 1) of Schwarz ('423) is not a housing. Examiner interprets a housing to mean an encasement, an enclosure, and/or a shelter. Therefore, element 10 (Fig. 1) does enclose and shelter, i.e. house, an engaged end of the extending element 21 (Fig. 1). In addition, applicant argues that the housing of Schwarz ('423) lacks a channel because element 11 (Fig. 1) of Schwarz ('423) is actually a slot. Examiner interprets a channel to mean a groove or furrow. Therefore, element 11 (Fig. 1) meets the limitation of a channel, and the channel communicates with an arcuate end of the extending element 21 (Fig. 1). Lastly, applicant argues that the element 21 (Fig. 1) of Schwarz ('423) is cited as a "flat arm" which fails to meet the limitation of the instant application defining the extending element as having "an arcuate encapsulated end slidably disposed in said channel" (claim 3, lines 5-6). While the element 21 of Schwarz ('423) is generically described as "a resilient flat arm 21" (column 2, line 26), Figures 1 and 4 of Schwarz ('423) clearly show that the encapsulated end of the arm 21 is in fact arcuate in shape and disposed in the channel 11 (Fig. 1).

8. With respect to the rejection of claims 1-4 and 8-19 in view of Schwarz ('317), applicant argues that Schwarz ('317) fails to teach an ergonomic support having a traction element because the element 14 (Fig. 3) of Schwarz ('317) is merely a pin. As previously cited, the amended specification defines on page 4 that "traction may also be applied by any of the following elements: a wire, a bowden cable, a hard drawn wire,

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a *pin*, a rod, a bracket and/or a spoke” (emphasis added). Therefore, the traction element 14 (Fig. 3) of Schwarz ('317) does have a first end engaging the actuator 40 (Fig. 3) and a second end in tractive communication with the arcuate encapsulated end of the extending element 5 (Fig. 1). Next, applicant argues that the element 5 (Fig. 1) of Schwarz ('317) is not an extending element because the specification defines the element 5 as a spring. However, Figure 1 clearly shows that the element 5 extends between a pressure surface end attached to a pressure plate 4 and an arcuate encapsulated end. Moreover, the element 5 (Fig. 1) of Schwarz ('317) is cited as a spring in order to describe the resiliency of the element and does not define away from an extending element. Next, applicant argues that the housing of Schwarz ('317) fails to disclose a channel. Figure 3 of Schwarz ('317) shows an enlarged view of the adjustment device of the seat back shown in Figure 1. Extending element 5 (Fig. 3) has an arcuate end that is encapsulated by a channel permitting the extending element to extend through the housing 16 (Fig. 3) to engage the horizontal pivot 8 (Fig. 3) and, as the extending element is adjusted, the arcuate end remains slidably disposed within the channel of the housing. Lastly, applicant argues that the element 16 (Fig. 3) of Schwarz ('317) is not a housing. Again, examiner interprets a housing to mean an encasement, an enclosure, and/or a shelter. Therefore, element 16 (Fig. 3) does enclose and shelter, i.e. house, an engaged end of the extending element 14 (Fig. 3).

9. The rejection under 35 USC 103(a) drawn toward claims 5-7 was argued solely on the premise that the cited art does not teach or suggest the ergonomic support

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defined in claims 1-4 and 8-19, and as a result the above 35 USC 103(a) rejection of claims 5-7 remains.

Upon consideration of the Applicant's arguments, Examiner maintains the rejections of claims 1-19.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.




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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

2168.

JE

November 20, 2003

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600